IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

LINDA LEE, **Plaintiff,** **v.** **JACTOM, INC. d.b.a BETHESDA HEALTHCARE,** **Defendant.**	)	**Civil Action No. 5:17-cv-431**

COMPLAINT

1. This is a civil action seeking damages and equitable relief from Jactom, Inc.'s unlawful discrimination against Plaintiff Linda Lee in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.*, and wrongful discharge of Plaintiff in violation of North Carolina public policy.

2. Plaintiff devoted nearly her entire career working for Defendant. At age 68, her supervisor believed she was too old to continue working. Her supervisor first demoted Plaintiff to housekeeper hoping that she would quit. When Plaintiff accepted the housekeeper position without complaint, the supervisor fired her, explicitly telling her she was being fired because of "her age." Defendant's termination of Plaintiff is a flagrant violation of the ADEA and North Carolina public policy.

THE PARTIES

3. Plaintiff Linda Lee is a resident of Cumberland County. Plaintiff was born on August 30, 1947. Plaintiff was employed at Defendant's Bethesda Healthcare Facility since the

facility opened in or about 1979 until her termination in 2015. During that period, Plaintiff was an "employee" of Defendant within the meaning of the ADEA, 29 U.S.C § 621(f), and the common law.

4. Defendant Jactom, Inc. is a corporation organized and existing under the laws of North Carolina, with its registered office and principal place of business located in Eastover, North Carolina. Defendant does business as Bethesda Healthcare and other similar names such as Bethesda Health Care Facility. Defendant owns and operates the Bethesda Healthcare Facility in Eastover.

5. Defendant was at all relevant times an employer within the meaning of the ADEA, 29 U.S.C § 621(b), and the common law. Defendant at all relevant times employed 20 or more employees.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter and the parties to this action pursuant to 29 U.S.C. § 626(c) and 28 U.S.C. § 1367(a).

7. Venue is proper in this district under 28 U.S.C. § 1391 because the causes of action arose in Cumberland County, North Carolina.

FACTS

8. The foregoing allegations are incorporated by reference herein.

9. Defendant operates the Bethesda Healthcare Facility, a nursing home and health care provider.

10. Plaintiff began working for Defendant in 1979. For most of her employment, Plaintiff worked as a social worker/admissions coordinator. Plaintiff's responsibilities primarily related to client intake and management. Her duties required her to regularly interact with the

public, including residents, potential residents, residents' families, and local hospitals. In the years leading up to her termination, Plaintiff's supervisor was Caroline Horne.

11. In or about 2012, Horne removed Plaintiff from her position as a social workers/admissions coordinator. Horne did not tell Plaintiff why she was being removed.

12. Horne replaced Plaintiff with a woman who was in her twenties.

13. Approximately five people have held Plaintiff's position as a social worker/admissions coordinator since she was removed. All of Plaintiff's replacements have been younger than her. When the position was vacant, Horne assigned Plaintiff to fill in until a new person could be hired.

14. After Horne removed Plaintiff from her position as a social worker/admissions coordinator, she gave Plaintiff several miscellaneous jobs. She eventually assigned Plaintiff to an "activity assistant" position.

15. The "activity assistant" position was a less desirable position than Plaintiff's previous position. Plaintiff's duties included organizing activities for residents, working in the beauty shop and dining room, and accompanying clients on trips. Plaintiff rarely interacted with the public. Plaintiff's office was moved to a storage closet.

16. Horne demoted Plaintiff to activity assistant because of her age.

17. One of Plaintiff's duties as activity assistant was to accompany clients in a transportation van. Plaintiff completed this duty without any difficulty when she started as activity assistant. However, not long after she took the position, Horne instructed Plaintiff's direct supervisor not to let her ride in the van because of Plaintiff's age.

18. Defendant provided its employees with health insurance. After Plaintiff became eligible for Medicare, Defendant informed her that she would be removed from the company

health insurance plan. In order to maintain the same level of coverage she had under Defendant's company health insurance, Plaintiff was required to enroll in supplemental insurance plans to make up for what Medicare did not cover. Plaintiff also went without some coverage, such as dental coverage, that had previously been provided by Defendant. Other employees who were under age 65 continued to receive company health insurance, including dental coverage, and were not required to purchase supplemental insurance plans.

19. Defendant denied Plaintiff health insurance because of her age. If Plaintiff had not been over 65, Defendant would not have denied her health insurance.

20. On Thursday, October 1, 2015, Horne called Plaintiff into her office. Horne told Plaintiff that she was going to be removed from her position as activity assistant. She told Plaintiff she would be a housekeeper. Horne did not give Plaintiff a reason for the demotion. She told Plaintiff she would begin her housekeeping position on Monday, October 5, 2015.

21. The housekeeper position was less desirable than the activity assistant position. The duties of a housekeeper included mopping, cleaning up accidents, and scrubbing toilets.

22. Horne demoted Plaintiff to housekeeper because of her age.

23. Horne did not want Plaintiff to continue working at Bethesda Healthcare because she thought Plaintiff was too old. Horne demoted Plaintiff to housekeeper in an attempt to compel Plaintiff to quit her job. Horne hoped Plaintiff would simply quit instead of accepting the housekeeper position.

24. Plaintiff accepted the housekeeper position without complaint. Plaintiff left the meeting with Horne and spoke to her new supervisor.

25. On the following day, Friday, October 2, 2015, Horne called Plaintiff back in her office. Horne told Plaintiff that she was being fired. Horne told Plaintiff she was being fired

because of "your age." She told Plaintiff that once the shock of the termination was over, Plaintiff would thank her because she would not have to come to work anymore.

26. At all times relevant to this complaint, Plaintiff was performing her job in a satisfactory manner, and was meeting her employer's reasonable performance expectations.

27. Plaintiff had not yet begun performing her duties as a housekeeper at the time of her termination.

28. Plaintiff was 68 years old at the time of her termination. Defendant terminated Plaintiff's employment because of her age. Defendant would not have terminated Plaintiff if she had been younger.

29. Upon information and belief, Defendant, through its corporate management, deliberately trained, supervised, instructed, and authorized its managers to engage in the unlawful practices described above, and approved and ratified their actions.

30. On January 18, 2016, Plaintiff timely filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging the violations of the ADEA set forth in Claim I below.

31. On February 9, 2017, the EEOC determined that there was cause to find that Defendant violated the ADEA by terminating Plaintiff because of her age.

32. On May 26, 2017, the EEOC issued Plaintiff a right-to-sue notice for her charge of discrimination.

FIRST CLAIM FOR RELIEF
Violation of ADEA, 29 U.S.C. § 621 *et seq.*
(Age Discrimination)

33. The foregoing allegations are incorporated by reference herein.

34. The ADEA prohibits discrimination in employment on the basis of an employee's age if the employee is at least 40 years of age. Plaintiff was at all relevant times an employee who was at least 40 years of age.

35. Defendant regularly employed more than 20 employees at all relevant times.

36. Defendant had no legitimate nondiscriminatory reason to terminate Plaintiff's employment. Defendant terminated Plaintiff because of her age.

37. Defendant's termination of Plaintiff's employment because of her age constitutes a violation of the ADEA, 29 U.S.C. § 621 *et seq.*

38. Plaintiff has satisfied all the procedural and administrative requirements applicable to ADEA claims by filing a timely written charge with the EEOC, receiving a notice of right to sue from the EEOC, and filing this complaint within 90 days from the receipt of the notice of right to sue.

39. As a proximate result of defendant's misconduct, Plaintiff has suffered loss of wages and benefits, and is entitled to relief under the ADEA including back pay, front pay, and attorneys' fees. 29 U.S.C. § 626(b).

40. Defendant's violations of the ADEA were willful, and entitle Plaintiff to liquidated damages. 29 U.S.C. § 626(b).

SECOND CLAIM FOR RELIEF

Wrongful Discharge in Violation of Public Policy

41. The foregoing allegations are incorporated by reference herein.

42. Defendant regularly employed more than 15 employees at all relevant times.

43. Under the North Carolina Equal Employment Practices Act ("NCEEPA"), N.C. Gen. Stat. § 143-422.1 *et seq.,* the North Carolina legislature has declared that it is the public

policy of the State of North Carolina to protect and safeguard the right and opportunity of all persons to obtain and hold employment without discrimination or abridgement on account of their age.

44. Defendant violated the public policy of the State of North Carolina by terminating Plaintiff on account of her age. Defendant wrongfully discharged Plaintiff in contravention of the express public policy of the State of North Carolina, which is actionable under North Carolina law.

45. As a proximate result of Defendant's misconduct, Plaintiff has suffered lost income, emotional distress, anxiety, humiliation, expenses, and other damages, and is entitled to recover compensatory damages.

46. Defendant's actions were done maliciously, willfully or wantonly, or in a manner that demonstrates a reckless disregard for Plaintiff's rights. As a result of Defendant's conduct, Plaintiff is entitled to recover punitive damages.

PRAYER FOR RELIEF

Plaintiff requests the following relief:

(1) That the Court declare that Defendant's practices complained of herein are unlawful under the ADEA and North Carolina common law;

(2) That the Court enter a judgment against Defendant and order Defendant to pay Plaintiff damages including lost wages (including lost benefits), compensatory damages, liquidated damages, punitive damages, and pre-judgment interest;

(3) That the Court award Plaintiff all reasonable costs and attorneys' fees incurred in connection with this action;

(4) That the Court grant the Plaintiff a trial by a jury; and

(5) Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues presented herein.

This the 24th day of August, 2017.

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